

R E M A R K S

Claims 11, 14, 25, 26 and 33-40 are pending in the present application.

Drawing Objections

The drawings have been objected to because reference numeral "10" has been used in both FIGS. 1 and 2.

However, FIG. 1 and FIG. 2 both describe embodiments of the same part of the invention, namely a POS terminal 10. Accordingly, Applicants are required to use the same reference numeral in both figures by 37 C.F.R. 1.84(p)(4):

"The same part of an invention appearing in more than one view of the drawing must always be designated by the same reference character, and the same reference character must never be used to designate different parts."

The specification clearly describes that FIG. 1 and FIG. 2 each describe embodiments of a POS terminal in accordance with the present invention. See, e.g., Page 6, line 11 ("The embodiment of FIG. 2 illustrates another embodiment of the POS terminal 10...") The remainder of the specification refers to the POS terminal 10. See, e.g., page 6, line 21 ("the POS terminal 10 of FIGS. 1 and 2").

Specification Objections

As requested by the Examiner, pages 1, 2, 5 and 8 of the specification have been amended to reflect the current status of the patent applications referenced thereby. No new matter has been added.

Section 112, First Paragraph Rejections

Claims 11, 14, 25, 26 and 33-40 stand rejected as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to make and / or use the invention. Applicants respectfully traverse the Examiner's Section 112 rejection.

It is Applicants' understanding that all of the rejections under 35 U.S.C. § 112 result from the description of two embodiments of the POS terminal 10 in two drawings. As explained above, FIG. 1 and FIG. 2 both describe embodiments of the same part of the invention, namely a POS terminal 10. Accordingly, the references in the specification to POS terminal (either with or without a corresponding reference numeral) do not, as the Examiner asserts, refer confusingly to one of two different components. Accordingly, there is no lack of enabling disclosure of the claimed invention. Further explanation with respect to each point raised by the Examiner in connection with this rejection follows:

From page 6, lines 11 and 19

The Examiner believes that this reference to the embodiment of POS terminal of FIG. 2 "has already been disclosed in FIG. 1" and "it appears it may be terminal 11". For clarification, another embodiment of the POS terminal 10 is shown in FIG. 2. Also there is no component in either the drawings or specification that uses reference numeral "11".

From page 6, lines 21 and 22

The Examiner believes that this reference to the embodiment of POS terminal of FIG. 2 "appears in error. It apparently should read POS terminals 10 and 11." Again, since both FIGS. 1 and 2 describe different embodiments of the same part of the invention, the reference to "the POS terminal 10" is not in error.

From page 7, lines 8, 12 and 14

Similarly, since both FIGS. 1 and 2 describe different embodiments of the same part of the invention, the reference to "the POS terminal 10" is not in error.

From page 8, lines 4, 5, 8 and 15From page 9, lines 4, 7, 9, 15 and 17From page 11, lines 4, 8, 11 and 12

The Examiner asserts that since the POS terminal is not labeled (i.e. includes a reference numeral) it is not clear what is being referenced. However, there are not two different components 10 and 11 of the invention as the Examiner previously believed. Accordingly, there is no lack of enablement due to this portion of the specification.

Section 112, Second Paragraph Rejections

Claims 33 - 35 are rejected under 35 U.S.C. § 112, paragraph 2. Applicants have amended claims 33 - 35 to remove the definite article "the" in the preambles of these claims. Applicants believe the claims are not indefinite.

Conclusion

For the foregoing reasons it is submitted that all of the claims are now in condition for allowance and the Examiner's early re-examination and reconsideration are respectfully requested.

Alternatively, if there remains any question regarding the present application or any of the cited references, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is cordially requested to contact Dean Alderucci at telephone number 203-461-7337 or via electronic mail at Alderucci@WalkerDigital.com.

Petition for Extension of Time to Respond

Applicants hereby petition for a **three-month** extension of time with which to respond to the Office Action. Please charge \$460.00 for this petition to our Deposit Account No. 50-0271. Please charge any additional fees that may be required for this Response, or credit any overpayment to Deposit Account No. 50-0271.

If an extension of time is required, or if an additional extension of time is required in addition to that requested in a petition for an extension of time, please grant a petition for that extension of time which is required to make this Response timely, and please charge any fee for such extension to Deposit Account No. 50-0271.

Respectfully submitted,



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January 2, 2003
Date

S P E C I F I C A T I O N A M E N D M E N T S
M A R K E D U P F O R M

Please **REPLACE** the paragraph that begins at **page 1, line 4** with the following paragraph:

The present application is a continuation-in-part application of (i) co-pending Patent Application No. 08/920,116, entitled METHOD AND SYSTEM FOR PROCESSING SUPPLEMENTARY PRODUCT SALES AT A POINT-OF-SALE TERMINAL, filed on August 26, 1997, issued on September 12, 2000 as U.S. Patent No. 6,119,099, which is a continuation-in-part of co-pending Patent Application No. 08/822,709, entitled SYSTEM AND METHOD FOR PERFORMING LOTTERY TICKET TRANSACTIONS UTILIZING POINT-OF-SALE TERMINALS, filed on March 21, 1997, issued on July 31, 2001 as U.S. Patent No. 6,267,670; and (ii) co-pending Patent Application No. 08/841,791, entitled METHOD AND APPARATUS FOR SELLING SUBSCRIPTIONS TO PERIODICALS IN A RETAIL ENVIRONMENT, filed on May 5, 1997, issued on July 20, 1999 as U.S. Patent No. 5,926,796, each of which are incorporated herein by reference.

Please **REPLACE** the paragraph that begins at **page 1, line 18** with the following paragraph:

U.S. Patent Application Ser. No. 09/045036 [____], entitled METHOD AND APPARATUS FOR FACILITATING THE PLAY OF FRACTIONAL LOTTERY TICKETS UTILIZING POINT-OF-SALE TERMINALS [(Attorney Docket No. WD2-97-558)], U.S. Patent Application Ser. No. 09/045518 [____], entitled METHOD AND APPARATUS FOR PROCESSING A SUPPLEMENTARY PRODUCT AT A POINT-OF-SALE TERMINAL [(Attorney Docket No. WD2-97-561)], U.S. Patent Application Ser. No. 09/045084 [____] entitled METHOD AND APPARATUS FOR CONTROLLING OFFERS THAT ARE PROVIDED AT A POINT-OF- SALE TERMINAL [(Attorney Docket No. WD2-97-564)], issued on April 24, 2001 as U.S. Patent No. 6,223,163, and U.S. Patent Application Ser. No. 09/045347 [____], entitled METHOD AND APPARATUS FOR PROCESSING A SUPPLEMENTARY PRODUCT SALE AT A POINT-OF-SALE TERMINAL [(Attorney Docket No. WD2-97-559)], now abandoned, each assigned to the assignee of the present invention and incorporated by reference herein.

Please **REPLACE** the paragraph that begins at **page 2, line 13** with the following paragraph:

A POS terminal may perform a supplementary process in addition to performing the processes listed above. A supplementary process can increase sales, and thereby increase the average profit gained per transaction. One such supplementary process is described in a parent application of the present application, Patent Application No. 08/920,116, entitled METHOD AND SYSTEM FOR PROCESSING SUPPLEMENTARY PRODUCT SALES AT A POINT-OF-SALE TERMINAL, filed on August 26, 1997, issued on September 12, 2000 as U.S. Patent No. 6,119,099. Described therein is a supplementary process in which a customer at a POS terminal is offered an "upsell" in exchange for an amount of change due. The POS terminal determines an upsell in dependence on a purchase of the customer, and also determines an upsell price (the amount of change due) based on the purchase. For example, a customer purchasing a first product for \$1.74 and tendering \$2.00 may be offered a second product in lieu of the \$0.26 change due. The upsell price, \$0.26, thus depends on the purchase price \$1.74.

Please **REPLACE** the paragraph that begins at **page 2, line 25** with the following paragraph:

Another supplementary process is a computer-determined "suggestive sell". U.S. Patent No. 5,353,219 describes a system for suggesting items for a customer to purchase from a primary category at conventional item prices. Still another supplementary process is described in a parent application of the present application, Patent Application No. 08/841,791, entitled METHOD AND APPARATUS FOR SELLING SUBSCRIPTIONS TO PERIODICALS IN A RETAIL ENVIRONMENT, filed on May 5, 1997, issued on July 20, 1999 as U.S. Patent No. 5,926,796. Described therein is a supplementary process

Please **REPLACE** the paragraph that begins at **page 5, line 7** with the following paragraph:

It is particularly desirable to provide an offer to exchange spare change due for an upsell, as described in the aforementioned parent application, Application No. 08/920,116, issued on September 12, 2000 as U.S. Patent No. 6,119,099. Accordingly, the present invention contemplates providing offers for upsells having high performance rates. In addition, the present invention contemplates providing offers for different upsells in accordance with an offer schedule.

Please **REPLACE** the paragraph that begins at **page 8, line 3** with the following paragraph:

As an illustration of the above-described method 40, the POS terminal may measure an activity rate, and determine if the activity rate is less than a predetermined threshold. If so, the POS terminal then determines an upsell in dependence on a purchase, as described in a parent application of the present application, Patent Application No. 08/920,116, entitled METHOD AND SYSTEM FOR PROCESSING SUPPLEMENTARY PRODUCT SALES AT A POINT-OF-SALE TERMINAL, filed on August 26, 1997, issued on September 12, 2000 as U.S. Patent No. 6,119,099. The POS terminal further determines an upsell price in dependence on the purchase, and offers the customer an upsell in exchange for the upsell price.

Please **REPLACE** the paragraph that begins at **page 8, line 18** with the following paragraph:

FIG. 4 is a table 60 that illustrates an offer schedule, which may be implemented as a database stored on the storage device 14 in a manner well known in the art. Each row of the table 60 represents an entry, and each entry defines an upsell to offer for an activity rate. In particular, each entry includes an activity rate identifier 62 that uniquely identifies the entry, an activity rate 64 which describes a rate or range of rates, and an upsell to offer 66 at that activity rate. As described in Patent Application No. 08/920,116, issued on September 12, 2000 as U.S. Patent No. 6,119,099, the upsell to offer 66 may include two or more upsells which are offered one at a time until an upsell is accepted.

**C L A I M A M E N D M E N T S
M A R K E D U P F O R M**

Please **AMEND** the claims as follow:

33. (AMENDED) A method for controlling [the] performance of a supplementary process at a point-of-sale terminal, comprising:

receiving an override signal; and
if the override signal indicates performance of a supplemental process,
determining an upsell in dependence on a purchase,
determining an upsell price in dependence on the purchase, and
offering to exchange the upsell price for the upsell.

35. (AMENDED) An apparatus for controlling [the] performance of a supplementary process at a point-of-sale terminal, comprising:

a storage device; and
a processor connected to the storage device,
the storage device storing a program for controlling the processor; and
the processor operative with the program to:
receive an override signal; and
if the override signal indicates performance of a supplemental process,
determine an upsell in dependence on a purchase,
determine an upsell price in dependence on the purchase, and
offer to exchange the upsell price for the upsell.

35. (AMENDED) A method for controlling [the] performance of a supplementary process at a point-of-sale terminal, comprising:

measuring an activity rate of a point-of-sale terminal; and
if the activity rate is below a first predetermined threshold, offering a first upsell having an first offer speed; and
if the activity rate is above a second predetermined threshold, offering a second upsell having a second offer speed greater than the first offer speed.